

1 Scott D. Cunningham (State Bar No.: 200413)
Email: scunningham@condonlaw.com
2 Ivy L. Nowinski (State Bar No.: 268564)
Email: inowinski@condonlaw.com
3 Condon & Forsyth LLP
1901 Avenue of the Stars, Suite 850
4 Los Angeles, California 90067-6010
Telephone: (310) 557-2030
5 Facsimile: (310) 557-1299

6 - and -

7 David J. Harrington (*Pro Hac Vice*)
Email: dharrington@condonlaw.com
8 CONDON & FORSYTH LLP
7 Times Square
9 New York, New York 10036
Telephone: (212) 490-9100
10 Facsimile: (212) 370-4453

11 Attorneys for Defendant
12 ICON AIRCRAFT, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 ESRA SEVER, individually, and as
parent and natural guardian of her minor
17 children, A.S. and B.S., et al.,

18 Plaintiffs,

19 vs.

20 ICON AIRCRAFT, INC.; MATTHEW
WOODRUFF, an individual; KURT
21 PARKER, an individual, EDWARD
ELLIS KARKOW as Personal
22 Representative of the Estate of Jon
Karkow (deceased); and DOES 1 through
23 12,

24 Defendants.
25

Case No. 4:18-cv-00584-HSG

**STIPULATED PROTECTIVE
ORDER**

26 **INTRODUCTION**

27 Disclosure and discovery activity in this action are likely to involve
28 production of confidential, proprietary, or private information for which special

1 protection from public disclosure and from use for any purpose other than
2 prosecuting this litigation may be warranted. Accordingly, the parties hereby
3 stipulate to and petition the court to enter the following Stipulated Protective
4 Order. The parties acknowledge that this Order does not confer blanket protections
5 on all disclosures or responses to discovery and that the protection it affords from
6 public disclosure and use extends only to the limited information or items that are
7 entitled to confidential treatment under the applicable legal principles. The parties
8 further acknowledge, as set forth in Section 12.3, below, that this Stipulated
9 Protective Order does not entitle them to file confidential information under seal;
10 Civil Local Rule 79-5 sets forth the procedures that must be followed and the
11 standards that will be applied when a party seeks permission from the court to file
12 material under seal.

13 **PROTECTIVE ORDER**

14 Based upon the foregoing and based upon the stipulation of the Parties, and
15 good cause appearing, IT IS ORDERED as follows:

16 1. Any Party may designate items of discovery or other information
17 produced or disclosed to any other Party as confidential and subject to the terms of
18 this protective order, so long as any such designation is made in good faith. Items,
19 including documents, tangible things or information, may be designated as
20 confidential if a Party believes in good faith the information contains trade secrets,
21 personal information, competitively sensitive information, proprietary or otherwise
22 confidential information that may be the subject of a protective order under Rule
23 26 of the Federal Rules of Civil Procedure. All documents designated as
24 confidential under this Order shall be marked prior to production by placing the
25 legend “**CONFIDENTIAL**” on each page of the document. Except as otherwise
26 adjudicated by the Court, all items so marked, and all copies, prints, summaries, or
27 other reproductions of such information, shall be subject to this Order.

28 2. Unless otherwise directed by the Court or through prior written

1 agreement of the Parties, and subject to the limitations of Paragraph 1 above,
2 information and documents subject to this Order shall not be used or shown,
3 disseminated, copied, or in any way communicated to anyone for any purpose
4 whatsoever, other than as required for the litigation of this action, including any
5 appeals. Any copies, excerpts, summaries, analyses, or other disclosures of, or
6 references to, the substance or contents of any information designated as
7 confidential shall be protected to the same extent as the underlying information.
8 Except as provided for below and in the paragraphs that follow, the Parties shall
9 keep all confidential information and documents strictly confidential from all
10 persons. The information and documents subject to this Order may be disclosed
11 only to:

- 12 (a) The actual named Parties, in the case of individual (non-corporate)
13 Parties in this action;
- 14 (b) In the case of corporate Parties in this action, officers, directors,
15 insurers, in-house counsel and current and former employees of such
16 corporations deemed reasonably necessary by counsel for the
17 prosecution, defense, trial or appeal of this action, including
18 employees and former employees of such Parties who testify as
19 pretrial or trial witnesses in connection with this action;
- 20 (c) Counsel (and their staff) who represent the Parties in this action;
- 21 (d) Experts or consultants retained by counsel, whether or not they are
22 expected to testify;
- 23 (e) The Court and court personnel for any purpose the Court finds
24 necessary;
- 25 (f) Jurors and court personnel at trial of this case; and
- 26 (g) Stenographic and/or videographic personnel hired to record testimony.

27 3. Disclosures shall be made to such persons identified in Paragraph 2,
28 and such persons may review such disclosures, only as necessary for purposes of

1 litigating this action. The persons identified in Paragraph 2 shall not otherwise
2 disseminate the information and documents subject to this Order, or the substance
3 of such information or documents.

4 4. Counsel (and counsel's staff) for the receiving Parties will abide by,
5 and be bound by, the provisions of this Protective Order, and will use due care to
6 ensure that the provisions of the Protective Order are known and adhered to by
7 clients, all persons under counsel's supervision and/or control and any person, firm
8 or corporation who has been retained by counsel to act on the receiving Party's
9 behalf in connection with this litigation.

10 5. With respect to deposition testimony and any document marked as an
11 exhibit thereto, the designation of confidentiality may be made on the record at the
12 time of the deposition, and the designated testimony shall be subject to the full
13 protection of this Order, unless challenged in accordance with the procedures of
14 Paragraph 14. In the case of testimony not so designated during the course of a
15 deposition, counsel may so designate confidential testimony, within thirty (30)
16 days of the deposition testimony and/or exhibits which contain confidential
17 material, in which case the designated testimony and/or exhibits shall be subject to
18 the full protections of this Order. Until the thirty (30) day period for notification
19 has elapsed, deposition transcripts in their entirety and all exhibits are to be
20 considered as confidential and proprietary and subject to the provisions of this
21 Protective Order. If, prior to and/or during the course of a deposition, a witness
22 refuses to be bound by the terms of the Protective Order, the deposition shall be
23 adjourned until application can be made to the Court regarding the deposition.

24 6. Each person given access to documents and information subject to this
25 Order, except those persons identified in paragraph 2(c), (e), and (f) above, must
26 acknowledge this Order and agree, in writing, to be bound by all its terms and
27 conditions. This requirement must be satisfied by obtaining the signature of the
28 person or persons on a copy of the Agreement to Be Bound by Protective Order,

1 attached as Exhibit “A” hereto. By agreeing to be bound by this Order, each
2 person consents to the jurisdiction of this Court over his or her person for any
3 proceedings involving alleged improper disclosure of documents or information
4 protected by this Order. Each Party shall maintain the original signed written
5 agreements and a verified list of all experts, consultants or persons to whom the
6 information and documents or copies thereof were revealed. The list of signatories
7 shall not be revealed to any other person or persons except through court order,
8 which shall only be granted upon a showing of good cause. The Party that appears
9 to have improperly disseminated the protected document or information shall be
10 required to produce its list of signatories to the Agreement to Be Bound by
11 Protective Confidentiality Order to the Party having claimed confidentiality.

12 7. If a Party intends to submit to the Court a document marked as
13 confidential either before or during trial, that Party or any other Party may request
14 that such document be placed under seal. If the Parties agree, such request shall be
15 presented to the Court as a stipulated motion. Otherwise, the request shall be
16 presented to the Court as a contested motion. Compelling reasons must be shown
17 for the under seal filing. The purpose of this provision is to avoid placing
18 documents under seal unnecessarily.

19 8. Neither this Order nor the designation of any item as confidential shall
20 be construed as an admission that such document, information or testimony would
21 be admissible in evidence in this litigation or in any other proceeding. In addition,
22 this Protective Order does not, of itself, require the production of any information
23 or documents; nor does the existence of this Order constitute an admission or
24 finding that any material marked as confidential is entitled to protection under
25 applicable law.

26 9. Nothing in this Order shall be deemed a waiver of any Party’s right to:
27 (a) oppose discovery on grounds other than that the same constitutes or contains
28 confidential information, or (b) object on any ground to the admission in evidence,

1 at the trial of this action, of any confidential information.

2 10. If any Party wishes to petition the Court to modify this Order or its
3 application to certain documents or information, the Party shall follow all
4 applicable Federal Rules of Civil Procedure and Local Rules in petitioning the
5 Court for relief.

6 11. All Parties, within sixty (60) days of the final conclusion of all aspects
7 of this litigation, or a dismissed Party within thirty (30) days of that Party's
8 dismissal with prejudice prior to the final conclusion of all aspects of this
9 litigation, shall:

- 10 (a) Provide to the Party's counsel that originally produced confidential
11 information a copy of all Agreements executed pursuant to paragraph 6,
12 above; and
13 (b) Retrieve all such confidential information, including all copies thereof
14 and all documents identifying such confidential information, in that
15 party's possession, custody or control, or in the possession, custody or
16 control of all such persons to whom the confidential information was
17 disseminated pursuant to paragraph 6, and either: 1) return all such
18 confidential information to the Party's counsel that originally produced
19 the confidential information (redacting any work product of the receiving
20 counsel) at the producing counsel's business office or any subsequent
21 address designated by that counsel, or 2) completely destroy all such
22 confidential information; and
23 (c) Upon written request, provide a declaration under the penalty of perjury
24 stating that a good faith effort was made to retrieve all such confidential
25 information received and/or disseminated, and that all such confidential
26 information has been either returned or destroyed as indicated in
27 subparagraph (a) and (b) above.

28 12. Up and until the commencement of trial, but not thereafter, the

1 provisions of this Order relating to the confidentiality of protected documents and
2 information shall remain in full force and effect and continue to be binding, except
3 with respect to documents or information that are publicly available. This Court
4 retains jurisdiction over all persons provided access to confidential materials or
5 information for enforcement of the provisions of this Order up and until trial is
6 commenced, but not thereafter.

7 13. Nothing in this Order shall be deemed to preclude any Party from
8 seeking or obtaining, on the appropriate showing, additional protection with
9 respect to the confidentiality of documents or information. Nor shall any provision
10 of this Order be deemed to preclude any Party from challenging the validity of the
11 confidentiality of any materials or information so designated.

12 14. If a Party elects to challenge the designation of confidentiality
13 (“Challenging Party”) of any document, information or testimony, the Challenging
14 Party shall notify the Party who designated the challenged document (“Designating
15 Party”) as confidential of its challenge, in writing. Once the challenge is raised,
16 the Parties shall promptly confer and make reasonable and good faith efforts to
17 resolve the disagreement without intervention by the Court. If they are unable to
18 resolve their differences in good faith within ten (10) days of receipt of the
19 challenge, the Challenging Party shall request a ruling from the Court with respect
20 to the confidential treatment of the information at issue within thirty (30) days of
21 completion of the meet and confer efforts. The Designating Party shall have the
22 burden to prove that the challenged document, information or testimony is entitled
23 to protection under applicable law. Until such time as the Parties’ contentions
24 regarding the confidentiality of documents, information or testimony are fully and
25 finally adjudicated, all documents, testimony or other materials designated by
26 defendants as confidential shall retain their confidential status. Nothing in this
27 agreement shall be deemed to alter, modify or reduce the burden on any party
28 asserting a privilege to make out all elements of the privilege claimed.

1 15. It is recognized by the Parties to this Protective Order that documents
2 or testimony may be designated inadvertently or erroneously as confidential, or
3 that such a designation inadvertently or erroneously may be omitted with respect to
4 documents or information that are entitled to such protection. Any Party to this
5 Protective Order may correct its designation or lack thereof within a reasonable
6 time and shall, at its own expense, furnish to all counsel copies of the documents
7 for which there is a change in designation.

8 16. It is recognized by the Parties that documents or testimony stamped as
9 confidential may be inadvertently disclosed to third parties by a receiving Party.
10 Any receiving Party may correct this inadvertent disclosure without sanction by
11 immediately bringing it to the attention of the producing Party by letter to the
12 producing Party's counsel in which the third Party is identified by name and
13 address. The receiving Party shall further provide an affidavit of counsel
14 confirming that to the best of his or her knowledge the documents and any copies
15 thereof were recovered from the third party.

16 17. All documents or information produced by the Parties prior to the
17 entry of this Protective Order by the Court shall be subject to the provisions of this
18 Protective Order to the same extent as if such Protective Order had been entered by
19 the Court as of the date such documents or information were produced. Producing
20 Parties shall have thirty (30) days from the date of entry of this Order to designate
21 already-produced materials as confidential. However, documents or information
22 obtained through means other than discovery in this action shall not be subject to
23 this Protective Order.

24 18. In the event that any person identified in paragraph 2 above who has
25 been provided access to confidential information produced in this action ("Person
26 Served"): (a) is served with a subpoena in another action, or (b) is served with a
27 demand in another action to which he or she is a party, or (c) is served with any
28 other legal process by one not a Party to this litigation, seeking information that

1 has been produced in this action by another Party and which is subject to this
2 Protective Order, the Person Served shall give prompt written notice of such event
3 to counsel of record for the Party that produced the information. Upon receipt of
4 written notice, the Party which produced the information shall advise the Person
5 Served of that Party's position with respect to the protected information.
6 Thereafter, the Party which produced the information shall assume responsibility
7 for prosecuting any objection to the discovery requests, subpoena or demand, and
8 the Person Served shall cooperate to the extent necessary to preserve the
9 confidentiality of the information. Should the person seeking access to
10 information take action to enforce such discovery requests, subpoena, demand, or
11 other legal process, the Person Served shall set forth in his response the existence
12 of this Stipulated Protective Order. Nothing herein shall be construed as requiring
13 the receiving Party to challenge or appeal any order requiring production of the
14 information.

15 19. This Order shall not prejudice the Parties' rights or arguments
16 regarding whether documents or information used at trial do or do not remain
17 confidential. Such issues will be taken up as a separate matter upon motion of any
18 Party.

19 20. It is understood by the Parties that this Stipulated Protective Order
20 may be executed in one or more counterparts, each of which shall be deemed an
21 original.
22
23
24
25
26
27
28

1 Dated: July 20, 2018

NELSON & FRAENKEL LLP

2
3 By: /s/ Carlos F. Llinas Negret

4 STUART R. FRAENKEL
5 CARLOS F. LLINAS NEGRET
6 NICOLE C. ANDERSEN

7 -and-

8 MICHAEL S. DANKO
9 CLAIRE Y. CHOO
10 DANKO MEREDITH APC

11 Attorneys for Plaintiff
12 ESRA SEVER

13 ATTESTED that all other
14 signatories listed, and on whose
15 behalf this document is
16 submitted, concur in its content
17 and have authorized its filing:

18 Dated: July 20, 2018

CONDON & FORSYTH LLP

19 By: /s/ Ivy L. Nowinski

20 SCOTT D. CUNNINGHAM
21 IVY L. NOWINSKI

22 -and-

23 DAVID J. HARRINGTON
24 CONDON & FORSYTH LLP
25 7 Times Square
26 New York, NY 10036
27 Telephone: (212) 490-9100
28 Facsimile: (212) 370-4453

Attorneys for Defendant
ICON AIRCRAFT. INC.

1 **APPROVED AS TO FORM:**

2 **EXHIBIT "A"**

3
4 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

5
6 I, the undersigned, acknowledge that I will be receiving documents that have
7 been designated confidential and subject to the terms of the Stipulated Protective
8 Order entered in the above-captioned case. I understand that such confidential
9 material is to be provided to me pursuant to the terms and restrictions of the
10 aforementioned Protective Order and acknowledge that I have been given a copy
11 of and have read that Protective Order. I understand that any use by me of
12 documents or information designated confidential under the Stipulated Protective
13 Order, or any portion or summaries thereof, in any manner contrary to the
14 provisions of the Stipulated Protective Order, will subject me to the sanctions of
15 the Court. I hereby agree to be bound by all of its terms.

16 I declare under penalty of perjury under the laws of the United States that
17 the foregoing is true and correct.

18 Dated this ____ day of _____, _____.
19

20 _____
21 *Signature*

22 _____
23 *Printed Name*

24 _____
25 *Witness*


26 _____
27 *Printed Name*
28

1 **IT IS SO ORDERED.**

2

3

4 Dated: _____ July 23, 2018

5 
6 Honorable Haywood S. Gilliam, Jr.
7 United States District Judge

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CONDON & FORSYTH LLP
1901 Avenue of the Stars, Suite 850
Los Angeles, California 90067-6010
Telephone: (310) 557-2030